



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,471	09/08/2003	Jonathan R. Broek	B70.12-0001	2674
7590	10/27/2004		EXAMINER	
Bryan F. Erickson Westman, Champlin & Kelly Suite 1600 900 Second Avenue South Minneapolis, MN 55402-3319			MCCARRY JR, ROBERT J	
			ART UNIT	PAPER NUMBER
			3617	
DATE MAILED: 10/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/657,471	BROEK, JONATHAN	
	Examiner Robert J. McCarry, Jr.	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/8/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 8, 15, 17 an 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsuboi (US 5,735,214).

Tsuboi discloses a creeper 10 comprised of a body 11 and a plurality of rail interfaces 20 coupled to the body and to move the creeper along a rail 1 having a transnational axis. The Examiner has interpreted a creeper to be a type of carrier for moving people or articles. The Examiner has further interpreted the rail interfaces to be a type of wheel or bearing for moving the creeper along a rail. The rail interfaces 20 have a flange, protruding inwards between a top axial section and a lower axial section as shown in figure 2, where the flange is generally marked as 25a. This flange mates with a side wall having a V edge 4 of the rail 1 which ensure proper alignment of the rail interface 20 and the creeper 10. Figures 3-5 show the V shaped edge 4 of the rail 1 which is comprised of first and second side walls, shaped together to form the V, wherein the first and second walls mate with the flanges of the rail interfaces 20. A close up view of the rail interface 20 and the rail is shown in figure 6. The rail interface 20 is further comprised of a threaded stem 21 which the Examiner has interpreted to be a

guide bar. The stem 21 mounts the rail interface 20 to the body 11 and also engages the sidewall of the rail by way of the edge of the wheel 25 to ensure proper alignment of the rail interface 20 with the rail 1. The creeper 10 is enabled to translate, or move, from a first position to a second position long a transnational axis of the rail 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboi (US 5,735,214) in view of Peterson et al (US 6,076,838).

Tsuboi discloses a creeper as described above. However, Tsuboi does not disclose the use of a locking device to fix the creeper in a stationary position. Peterson et al discloses a creeper comprised of a body and a plurality of wheels as shown in figure 1. Peterson et al also discloses feet 50, which act as brake devices for the creeper in order to hold the creeper stationary in position. It would have been obvious to one of ordinary skill in the art to have applied feet, like those of Peterson et al, to a creeper like that of Tsuboi in order to hold the creeper in a stationary position making it easier for a person to use or making it easier to load or unload products to be moved.

Claims 10-14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboi (US 5,735,214) in view of Brooks et al (US 4,895,380).

Tsuboi discloses a creeper as described above. However, Tsuboi does not disclose an upper frame coupled to the lower frame for vertical and rotational movement. Brooks et al discloses a creeper having a lower frame 1 and an upper frame 3 connected to the lower frame by lifting arms 4, 5. Lifting arms are coupled to the lower frame by pins that the Examiner has interpreted as swiveling couplings since they allow for rotational movement of the lifting arms 4, 5. Using the lifting arms 4, 5 the upper frame is capable of being moved in a vertical direction relative to the lower frame, as shown in figure 1 and capable of being rotated relative to the frame, as shown in figure 2. The rotated position of figure 2 allows for enhanced support of a person in a supine position. The upper frame is also capable of being moved to allow for enhanced support of a person in a sitting position, as shown in figure 3. Gear mechanisms 6A, 6B acts to lock the upper frame in place and are engageable between the upper and lower frame through lifting arms 4, 5. It would have been obvious to apply a moveable and lockable upper frame, like that of Brooks et al, to a creeper assembly, like that of Tsuboi in order to allow for various users to use the creeper for various tasks and thereby letting the user tailor a comfortable position for user based on the build of the users body as well as the job to be done.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuboi (US 5,735,214) in view of Johnson (US 5,711,227).

Tsuboi discloses a creeper as described above. However, Tsuboi does not disclose the use of two rails for the creeper to move. Johnson discloses a portable dolly and a track having two rails 16, 17 fixed parallel to each other and connected by

intermediate crossties 28 for movement of the dolley. Best shown in figure 2. It would have been an obvious multiplication of parts to one of ordinary skill to have applied a second rail for a creeper like that of Tsuboi based on a teaching from a system like that of Johnson. The second rail would add more stability to a creeper like that of Tsuboi.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703) 305-0581. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJM
October 20, 2004

ROBERT J. McCARRY, JR.
ROBERT J. McCARRY, JR.
PATENT EXAMINER
3617
10/20/04